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And this is true not only of the primitive agricultural labor of the solitary farmer, but of the most complicated labor of modern industrial society. It is, of course, always competent to show that, by artificial regulations, one man takes the reward of another man's labor, and then the notion of justice does apply to the acts of such a man, as it does to all the acts of men, and forbid the taking. But the burden of proving that there is such a taking of the rewards of one man's labor by another is on the person asserting it. That burden is not met by simply showing that the rewards of a day's labor differ very largely among the various laborers, as the writer seems to assert (page 111). The labor of a leader of industry, like Carnegie, is worth more than the labor of one of his employees, and deserves a larger reward. His superior prowess, courage, intellect—whatever you please to call the qualities by which he succeeds—are worth more, because in a system of free industrial competition, unfettered by any laws except those against violence, they have earned him that larger reward, and this is the only test which we have it in our power to apply.

In all probability, laboring alone as a farmer, Carnegie's superior ability would raise a crop of potatoes larger than that of his fellow-farmers. To deprive him of the excess of his crop, on the principle that the rewards of all labor should be the same, would not be justice, but gross injustice.

It seems like fighting with shadows to soberly set down such commonplaces of political economy, but the author's book is our excuse.

T. B. STORK.

HAND-BOOK OF THE LAW OF TORTS. By EDWIN A. JAGGARD, A.M., LL.B., Professor of the Law of Torts in the Law School of the University of Minnesota. (Hornbook Series.) Two Volumes. St. Paul: West Publishing Co. 1895.

It is interesting to a Philadelphian to note that Professor Jaggard studied law in the office of the late E. Coppée Mitchell. The thoroughness of study which distinguished

Mr. Mitchell and made him so valued a member of the Bar is noticeable in the work before us.

Professor Jaggard naturally adopts the division of the subject followed in Sir Frederick Pollock's classic on the law of torts. About two-fifths of the book—it is in two volumes—are given to the principles underlying all, or at least the majority, of torts, and the remaining three-fifths are devoted to the discussion in detail of the various wrongs known to the common law. Mr. Jaggard also adopts Sir Frederick Pollock's definition, and shows by analysis and citation how immeasurably superior this definition is to any others that have been suggested. "A tort is an act or omission giving rise, by virtue of the common law jurisdiction of the court, to a civil remedy which is not an action on a contract."¹ That the definition should contain a negative is unfortunate, but probably unavoidable.

The author heads his second chapter, "Variations of the Normal Right to Sue." In it, he discusses, carefully and conscientiously, the variations based on privilege, as, for instance, the immunity of judicial officers; the variations based on status, for example, insanity and infancy; and, lastly, those based on the conduct of the plaintiff, for example, his own wrong-doing or consent.

In his next chapter—"Liability for Torts Committed By or With Others"—one could wish that the section on "Independent Contractor" was a little more extended. The paramount duty of a city to keep its streets in a reasonably safe condition deserves, we think, more than a few passing references in the notes. It is stated (page 237) that this duty of the city "cannot be delegated," and that "where it lets a contractor for improving its streets, and the contractor makes excavations in the streets and fails to supply proper guards or lights, and a traveler is injured in consequence of such failure, the city is liable, and it is immaterial that the city had no notice that the ditch was not guarded or lighted." Four or five cases are cited as authorities for this, the last of the list being *Hepburn v. City*, 149 Pa. St. 335. The Pennsylvania

¹ Poll. Torts, *4.

lawyer will, however, remember that in *Hepburn v. City* there was no legally executed contract in existence at the time the accident happened, and that the Supreme Court, for that reason, held the city liable. Had there been a legally executed contract in existence, the court would undoubtedly have come to a different conclusion. The case is, therefore, to be regarded only as an affirmance of the Pennsylvania rule, which, since the decision of *Painter v. Pittsburgh*, 46 Pa. St. 213, has been the contrary of the author's proposition. The latter is, however, a faithful expression of the doctrine in force in the majority of jurisdictions.

We wish we had space to give the chapter headings of the author's second part. In it, as we have said, he discusses separately and in detail the several torts known to the common law. To the more frequent and important ones, he devotes entire chapters. His black-letter analyses are admirable, and his notes are fairly bursting with authorities. His chapter on negligence is particularly full. He quotes, on page 83, the well-known remark of Chief Justice Earle as to the abuse of the word "negligence," and "the pernicious effects of its undefined latitude of meaning." He calls attention to the more modern view of negligence, which, as he says, is based on practical distinctions of the law substantive. On the one hand are the cases in which a man acts on his peril—the doctrine of *Rylands v. Fletcher*—and on the other are the cases in which the plaintiff's motives determine his liability. Between the two, separated necessarily in thought, though unfortunately not always separated in the decisions of the courts, is negligence—the failure under certain conditions to exercise due care.

At the end of his second volume the author fulfils a promise in his preface, and devotes two chapters to working out in detail the thread of relationship "always existing," as he says, "between contract and tort." This he does under two heads, "Master and Servant" and "Common Carriers," under which, as he tells us, he has grouped the cases especially illustrating the various violations of duty arising "from contract or from the state of facts of which a contract forms a necessary part."

The author's style might be a little smoother. It is sometimes a little careless, and one wishes that he had given more time to the final work of polishing off rough edges. The book, however, will be valuable to the practitioner. Its blemishes are always those of form, its merits those of substance. The latter, we believe, are quite sufficient to ensure it a long and useful life.

F. F. KANE.

RECOLLECTIONS OF LORD COLERIDGE. By W. P. FISHBACK.
Indianapolis and Kansas City: The Bowen-Merrill Co.,
1895.

This is a dainty little volume, handsomely printed on good paper, with uncut edges. Mr. Fishback, the author, is a member of the Bar of Indianapolis of high standing, formerly a law partner of ex-President Harrison, and now Dean of the Indiana Law School. He was also, at one time, editor of the Indianapolis *Daily Journal*, wrote the sketch of General Harrison for the New York *Evening Post* in 1888, and also the sketch of the same gentleman in *Appleton's Encyclopedia of American Biography*. When visiting England, he carried letters to the best litterateurs of that kingdom, and was accredited to the Chief Justice by letters from so high a source as Mr. Justice Harlan. That he justified the introduction is evidenced by the exceeding and continued cordiality extended him by Lord Coleridge, which was evidently more pronounced than even a courteous perfunctory recognition demanded. He was entertained by the eminent English jurist at his house and on the circuit, sat by him on the Bench, and had an opportunity of seeing the administration of justice in English courts by a most distinguished judge, such as falls to the lot of but few traveling American lawyers. Mr. Fishback seems to have been equipped with an acute and discerning mind, and, appreciating the exceptional privileges afforded him, he has recorded his experiences and conversations with a regard for details, which speaks well for his memory.

The little book is, as it purports to be, simply recollections